

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 12, 1999

IN RE:)	
)	
PETITION OF NEXTLINK TENNESSEE, L.L.C.)	
TO SANCTION BELL SOUTH ADVERTISING AND)	DOCKET NO.
PUBLISHING CORPORATION AND ENFORCE)	98-00654
THE TRA ORDER REGARDING TELEPHONE)	
DIRECTORIES)	

**ORDER GRANTING REQUEST FOR RECONSIDERATION AND NOT
REQUIRING THE USE OF THE PHRASE "PUBLISHED BY"
TO APPEAR ON THE COVER OF BELL SOUTH 1999 NASHVILLE AREA
WHITE PAGES DIRECTORIES**

This matter came before the Tennessee Regulatory Authority ("Authority") on the Authority's own motion, to consider the Request for Reconsideration ("Request") filed by Chairman Melvin J. Malone. The Chairman's Request asked the Authority to reconsider its Order of December 31, 1998, in which the Authority denied the request of NEXTLINK Tennessee, L.L.C. ("NEXTLINK") to place the phrase "published by" on the cover of the BellSouth 1999 Nashville Area White Pages Directories.¹ More specifically, the Request asked the majority to reconsider their position that the Authority lacked

¹ BellSouth Advertising and Publishing Corporation ("BAPCO") publishes the White Pages directory listings on behalf of its affiliate BellSouth Telecommunications, Inc. ("BellSouth").

jurisdiction to entertain NEXTLINK's request.² The Directors considered this matter at a regularly scheduled Authority Conference held on February 2, 1999.

The Directors were originally prepared to entertain the Chairman's Request at a regularly scheduled Authority Conference held on January 12, 1999. However, on January 8, 1999, prior to the Authority's consideration of the same, the Court of Appeals for the Middle Section of Tennessee entered an order staying the Order of the Authority entered in this proceeding on November 2, 1998.³ Subsequent to the entry of the stay by the Court, the Court scheduled and held a Pre-Hearing Conference in *Appeal No. 01A01-9811-BC-00593* on January 19, 1999. Thereafter, out of an abundance of caution and deference to the Court of Appeals, the Authority determined that it would be appropriate to consider the Chairman's Request at the first Conference in February after the Authority received direction from the Court of Appeals at the Pre-Hearing Conference on January 19, 1999.

At the Pre-Hearing Conference, counsel for the Authority specifically asked the Court whether the Authority could take action on the Chairman's Request. In an Order entered on January 21, 1999, the Court specifically permitted the Authority to continue or commence "any proceeding involving either BAPCO or Nextlink that is within the Authority's jurisdiction, including proceedings involving Tenn. Comp. R. & Regs. r.

² See November 3, 1998, Authority Conference Transcript at 56-7, 59-60, 65, and 71.

³ On November 12, 1998, BAPCO sought appellate review of the Authority's November 2, 1998, Order. *In Re: BellSouth Advertising and Publishing Corporation v. NEXTLINK Tennessee L.L.C., Tennessee Regulatory Authority*, Appeal No. 01A01-9811-BC-00593. The Authority's Order of November 2, 1998, affirmed the Authority's interpretation of Tenn. Comp. R. & Regs. r. 1220— 4 — 2 —.15 concerning White Pages directories, as stated in the Authority's March 19, 1998, Declaratory Order entered in Docket No. 96-01692. The Order also stated that the rule would be enforced for the benefit of NEXTLINK or any other similarly situated, competitive local exchange carrier seeking to appear on the cover of the White Pages directories published by BellSouth Advertising & Publishing Corporation.

1220— 4 — 2 —.15.” The Court also stated that its Order of January 8, 1999, only stayed the effect of the Authority’s Order of November 2, 1998. A copy of the Court’s January 21st Pre-Hearing Conference Order is attached hereto as **Attachment A**.

At the Authority Conference held on February 2, 1999, the Directors, after careful consideration, voted to grant the Chairman’s Request for Reconsideration.⁴ Thereafter, the Directors determined that pursuant to statutory authority,⁵ the Authority did in fact have the requisite jurisdiction to consider NEXTLINK’s request. However, after considering NEXTLINK’s request and comments of counsel at the November 3rd Conference, the Directors voted unanimously, in their discretion, not to exercise the authority to require BAPCO to place the phrase “published by” on the cover of the BellSouth 1999 Nashville Area White Pages Directories.

IT IS THEREFORE ORDERED THAT:

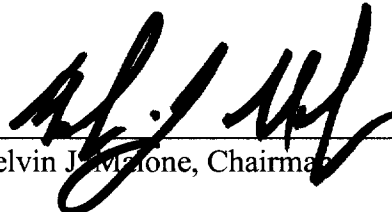
1. The Chairman’s Request for Reconsideration is granted.
2. The position taken by the Authority as set forth in its Order of December 31, 1998, concerning the lack of jurisdiction to entertain this matter is reversed and any assertions in that Order that are inconsistent with the position set forth herein, are hereby vacated.
3. Upon consideration of Nextlink’s request, the Authority will not exercise its discretionary authority to require BellSouth Advertising and Publishing Corporation to

⁴ The Motion to grant Chairman Malone’s Request was passed by a 2-0 vote of the Directors. Chairman Malone did not participate in the vote to consider his request for reconsideration because he voted in the minority with regard to the action memorialized in the Authority’s Order of December 31, 1998.

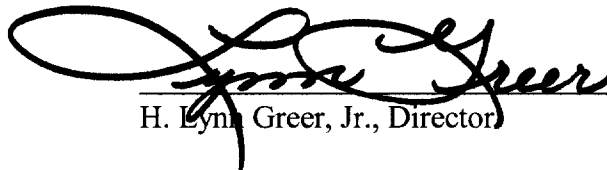
⁵ See Tenn. Code Ann. §§ 65-4-104, 65-4-106, 65-4-117(3) and 65-4-124(a).

place the phrase "published by" on the cover of the BellSouth 1999 Nashville Area White Pages Directories.

4. Any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this order.



Melvin J. Mione, Chairman



H. Lynn Greer, Jr., Director



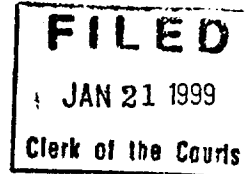
Sara Kyle, Director

ATTEST:



K. David Waddell, Executive Secretary

**IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE**



BELLSOUTH ADVERTISING &)	
PUBLISHING CORPORATION,)	
)	
Plaintiff/Appellant,)	Tennessee Regulatory Authority No.
)	98-00654
VS.)	
)	
NEXTLINK TENNESSEE, L.L.C.,)	Appeal No.
TENNESSEE REGULATORY)	01A01-9811-BC-00593
AUTHORITY,)	
)	
Defendants/Appellees.)	

PREHEARING CONFERENCE ORDER

This is an appeal from an order entered by the Tennessee Regulatory Authority on November 2, 1998, directing BellSouth Advertising & Publishing Corporation ("BAPCO") to place Nextlink Tennessee, L.L.C.'s ("Nextlink") name and logo on white page directories published by BAPCO in accordance with the Authority's declaratory order filed on March 19, 1998 in *In re Petition of AT&T of the South Central States, Inc.*, Docket No. 96-01692. The Authority's March 19, 1998 order is the subject of a currently pending appeal styled *BellSouth Advertising & Publishing Corp. v. Tennessee Regulatory Auth.*, No. 01A01-9805-BC-00248. Pursuant to Tenn. R. App. P. 33 and the January 8, 1999 order of this court, counsel for the parties attended a prehearing conference on January 19, 1999 to consider the simplification of the issues and such other matters that may aid in the disposition of the appeal. Based on the matters addressed during the prehearing conference, the court hereby orders as follows:

1. Because of the substantial similarity of the issues, this appeal will be consolidated for consideration with *BellSouth Advertising & Publishing Corp. v. Tennessee Regulatory Auth.*, No. 01A01-9805-BC-00248. However, both appeals shall maintain their separate appeal numbers and papers filed in either of these appeals shall bear the appeal number of the proceeding in which they are filed.

ATTACHMENT A

2. In this proceeding, BAPCO intends to raise the same issues concerning the Authority's interpretation and application of Tenn. Comp. R. & Regs. r. 1220-4-2-.15 (1984) that it has raised in *BellSouth Advertising & Publishing Corp. v. Tennessee Regulatory Auth.*, No. 01A01-9805-BC-00248. The briefs heretofore filed in appeal no. 01A01-9805-BC-00248 addressing these issues will constitute the parties' briefs on these issues for the purposes of this appeal.

3. BAPCO also intends to raise procedural and jurisdictional issues concerning the Authority's consideration of Nextlink's petition filed on September 23, 1998. The following briefing schedule shall apply with regard to these issues: BAPCO shall file its brief on or before February 23, 1999; the Authority and Nextlink shall file their briefs within thirty (30) days after the filing of BAPCO's brief but not later than March 25, 1999; BAPCO shall file its reply brief, if any, within fourteen (14) days after the filing of the later of the briefs filed by the Authority or Nextlink but not later than April 8, 1999.

4. The oral argument shall be rescheduled from June 15, 1999 to April 12, 1999, during the A.M. session. BAPCO shall be allowed up to thirty (30) minutes for oral argument. The Authority and Nextlink shall be allowed up to thirty (30) minutes which may be divided between counsel for the parties as they deem appropriate.

5. Service of all documents, including briefs and motions, shall be by hand delivery or facsimile, except that service by hand delivery or fax, shall not be required on those parties who have not appeared in this court so long as service on such parties complies with Tenn. R. App. P. 20.

6. The stay heretofore issued by this court on January 8, 1999 applies only to the enforcement of the Authority's November 2, 1998 order. It does not prevent the Authority from continuing or commencing any proceeding involving either BAPCO or Nextlink that is within the Authority's jurisdiction, including proceedings involving other issues regarding Tenn. Comp. R. & Regs. r. 1220-4-2-.15. This order shall not prevent any of the parties from seeking judicial review of any other decision by the Authority with regard to any matter not directly addressed in the Authority's November 2, 1998 order.


WILLIAM C. KOCH, JR., JUDGE